4:Huntingford E-5 (1938-1939) 1951 FLÁ Dorobo FLÁ

4. Birth

Intercourse stops at the fourth or fifth month of pregnancy, and 834
normally is not resumed till about six months after the birth of the child. 843
When the woman's time has come, she *cuti ka*, "enters the hut", and the husband must then lodge elsewhere, either building himself a rough shelter or living with one of his neighbours in the settlement. During the act of 844
birth the woman is helped by a midwife, *ngaiteyonit*, and her mother is present if possible. She stays for six or seven days in the hut after giving birth, 846
and may then see her husband for the first time since she "entered the hut". The child's body must be kept covered for several weeks after its [854]
birth, and only its face may be seen, even by the father. At this stage the mother must be purified by her husband, who kills a goat (which he [983]
must buy or steal if he has none of his own), and rubs the fat and undigested grass from its stomach (*siyat*) over her face, breasts, and belly. After about three months the husband may come back to live in his own hut.

The birth of twins is not liked, for they are abnormal, and the old 845
men say, *yaaere amo aaasii kamat* ("they are bad because they make the mother unclean"). If the father should have set a trap at the time when twins are born to him, it is believed that that trap will never catch an animal. The ritual uncleanness caused by the birth of twins is removed by [983]
the killing of a goat (which the husband must get by any means if he owns none) to be eaten by the mother and her female friends.

A girl who has a child before marriage is called, as among the Nandi, 848
ceurpuut, and becomes unclean ritually as a result. She may be purified, [983]
however, by the man responsible or one of his male relatives who must kill a he-goat. The meat is eaten by the men and women of the settlement, but not by the girl; and the *siyat* or undigested grass from the stomach is rubbed by one of the women over her face, neck, and breasts, and then washed off. By this means she becomes clean again, unlike such people among the Nandi, who remain unclean all their lives.

A baby is suckled as a rule until the mother is well advanced into 853
her next pregnancy: the standard period was given as "twelve months". If the mother has no milk, or not enough, she goes about begging for milk, *sumii cake*; but as often as not in such cases the baby dies of starvation. It is weaned by being slapped when it tries to suck, and by the application 869
to the nipples of something bitter, generally a concoction made from the root of a bush called *kenkenit* (Nandi, *ketrwet*). At this time it is fed with milk from a small gourd, and if no milk can be got, it is given honey instead. It is also given bits of meat cut up small and fed from a spoon made of a piece of gourd; and gruel made from maize or eleusine meal mixed with honey.

If the mother dies in child-birth, her husband's mother or some other 853
female relative takes charge of the baby and feeds it with milk from a 868
small horn: if milk cannot be got, honey and gruel are tried; but very small babies fed in this way seldom live. Sometimes the child may be adopted [591]
by a married couple.

4:Huntingford E-5 (1938-1939) 1951 FL6 Dorobo FL6

Adoption is also practised when an unmarried girl has a baby. In such cases it may be adopted by a childless couple, i. e. who have lost their children, or whose children have grown up and left them, but mostly (on the rare occasions when it occurs) the father. An adopted child has the status of a man's own child. Adoption may in certain cases be by previous arrangement. It has happened, I was told, that a person who has cattle or means of getting milk may hear that a certain girl has got pregnant, and gives notice that he will adopt the child when it comes. The mother of the girl accordingly tells him when the girl "enters the hut", and the adopter's wife fetches the baby to her own home as soon as it born. She feeds it with milk from a small horn, and the Dorobo reckon that such babies will do all right, for they say, "such a child need not suck for very long". Illegitimate children are killed if nobody can be found to adopt them.

5. Adultery and divorce

Adultery may be punished by a husband who catches his wife with another man, by shooting the male offender with an arrow. If he kills him, he has to pay the normal compensation for homicide. He may also beat his wife, after which he "waits till she has got sense", as they put it, when he buys a goat for her, which they eat together. A man does not divorce his wife for a single act of adultery, but only if she is a bad and neglectful wife who is continually caught with other men.

When a man has, after much thought, made up his mind to divorce his wife, he calls in one of his relatives to help him perform the divorce ceremony. Taking a piece of liana, he rubs earth on it and gives one end to his relative to hold, taking the other end himself, the wife being present and looking on. They then break the liana in two, the man saying to his wife, *Kooil hatwaisiat hun hil paroonni, ni ha, pakahtaa* ("I have broken our marriage as this liana has been broken: go home and leave me"). He can then claim the return of the live stock which he paid to her father. But only a woman who has not borne her husband a child can be divorced; once there has been a child, no divorce is possible, for the birth of a child completes the union, which once completed is indissoluble.

6. Polygyny

In theory a Dorobo can have as many wives as he can pay for, which means that usually a man has but one wife at a time. Polygyny may therefore be said to be non-existent. The only thing that does occur is the occasional re-marriage of a man after the death or desertion of his wife, of which I recorded three cases. Widows, again, seldom re-marry, living normally either with their husbands' brothers, returning to their parents, or even living alone. In one genealogy, however, I found a woman who was married to four successive husbands, none of whom was her husband's brother, and having as issue but one daughter. The Dorobo themselves remarked upon this succession of marriages as being a most unusual occurrence.

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get his relations to help with the purchase price so as to avoid having any other than relations as neighbors. Each lily planted as boundary had its [p. 89] roots first smeared with tatha. If a tree was the boundary mark it was blazed with an axe and tatha smeared on the blaze. When the boundary had been marked they would go and sit down, and the Ndorobo claimed 1) the knife which had cleared the tract, 2) the axe which had blazed the trees, 3) a branding iron used for marking honey-barrels; the latter indicated that he was going to move his honey-barrels, 4) a young ewe, which had not yet borne a kid. This ewe was called the mwati ya njegeni (the ewe of the stinging nettles). The latter was to compensate him for the stings sustained in marking out the boundary. The ewe and the ram sealed the contract; 5) a pot of honey. Up to the time when the Europeans came Wanderobo at Kijabe were still selling land there in that way. There were Dorobo in this District as far as the Chania. We always bought them out and never drove them out. If we had driven them out there would have been a curse on the land. Moreover purchase gave right of possession against others. The purchases were made by individuals. The Ndorobo always moved off the land which he sold. The adoption ceremony was as follows. The Kikuyu called the Ndorobo to his village in his own country and in the presence of witnesses they sat down on an ox-hide. Then there were brought 1) an ewe (mukuha), 2) a branding iron (ruoro), 3) a razor (ruenji), 4) a cattle-breeding arrow (ndia). There was also fat, 5) ira (white diatomite), 6) oil. All these things were passed seven times round the rukwaro and the cooked breast of a ram, to make the pledge binding and put a curse on any who broke it. Then the adopter and the adoptee ate the meat and put on the rukwaro which was cut by two old men. Next an old woman brought oil and the ira and rubbed it on the hands of the two parties. Then each party put his thumb into the ira and marked the other right down the nose. Each adjured the other by that mark not to break the proposed contract of sale and not to harm the other. Then an old woman took castor oil mixed with ugembe (grain) and rubbed the marks off their noses. The Kikuyu was bound by this oath to be a protector of the Ndorobo. The Kikuyu used the land for cultivation only. They were not hunters.

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425 Individual Kikuyus, therefore, entered into negotiations with
597 Wanderobo families and having offered goats and sheep as purchase price and found sellers, they then would propose a ceremony of mutual adoption as a preliminary to the negotiations that were to follow.

"From the point of view of the European it would seem to be quite unnecessary that a sale of land by a member of one tribe to a member of another tribe should be preceded by a ceremony of adoption, and it is therefore necessary to try to obtain a clear idea of the reasons which made the Kikuyu insist upon such a ceremony as the preliminary to such a transaction, as well as the reason why the Wanderobo so readily acceded to such a condition being instituted. The tribal law and custom of both tribes is, of course, responsible.

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425 "Within the Kikuyu tribe any person who stole the property of
597 any other member of the tribe, or who killed, wounded or otherwise harmed any other member of the tribe, became liable by
673 law to criminal proceedings involving the payment of fines or other punishments. This law applied not only to members of the tribe by birth, but to all who had become members of the tribe by adoption, so that if any Kikuyu were to kill or harm any adopted Wanderobo he would be held responsible by Kikuyu law and would be punished.

"On the other hand, if a member of the Kikuyu tribe were to kill, harm or steal from a member of any other tribe, he was not responsible by Kikuyu law, and he was not legally liable for the damage done. He was, however, likely to be punished by any means possible by the members of that other tribe and also by the departed spirit of the deceased in the case of having caused death.

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425 "When a Kikuyu adopted a Wanderobo as a member of his family
● 597 ... he bound that Wanderobo and his family to him with very special ties, and he also bound himself to protect, not only the Wanderobo, but also all his property. At the same time, the

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Wanderobo, who had very similar laws to those of the Kikuyu on such matters as these, bound himself to treat the Kikuyu who had adopted him as a brother and a fellow Wanderobo. In other words the adoption ceremony was founded on mutual safeguard and guarantee of good faith. By the oaths which the Kikuyu took when he performed the adoption ceremony he laid himself open to both supernatural and judicial punishment if he failed in any of his obligations to the Wanderobo when he adopted him, or when he proposed to buy land, [p. 95] but he also obtained in exchange oaths from the Wanderobo which bound him to act fairly and justly in all his dealings with the Kikuyu. Not only so, but the adoption ceremony which took place in the presence of many witnesses from both sides bound both parties to avenging the death of either. This meant that once the adoption ceremony had taken place the Kikuyu purchaser of the land of the Wanderobo could go into the forests he had purchased without fear of being attacked or killed by any other Wanderobo, for they all knew that he had been adopted by one of their own tribe. Similarly, the Wanderobo who had been adopted could, after this, come and go freely in Kikuyu country without fear of molestation, for as a member of a Kikuyu family he was a member of the Kikuyu tribe and any person who killed him would at once become liable to a fine of 100 goats and sheep by Kikuyu law.

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"Moreover, if, after the adoption ceremony was over, the Wanderobo failed in his obligations the Kikuyu, as an adopted Wanderobo, could claim against him in the Wanderobo judicial courts, and similarly if the Kikuyu failed to recover his obligations he could be sued by the Wanderobo in the Kikuyu courts, for the Wanderobo, as an adopted member of the family and tribe was then entitled to make use of the Kikuyu courts. If a land transaction were to take place between Kikuyu and Wanderobo without a preliminary ceremony of adoption, neither party would feel in any way bound to honour the agreement, and there would be no legal support to either party in the case of breach of contract, for the whole proceedings would be outside the jurisdiction of either the Kikuyu or Wanderobo courts. By means of the

S:Lambert--63 G-5 (ca. 1935-1950) 1950* FL10 Kikuyu FL10
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adoption ceremony the transaction was placed on a legal basis for both parties and became absolutely binding." (1)

1. In hitherto unpublished study of the Southern Kikuyu.

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Meaning of words used

By the European investigators of the Kikuyu method of acquiring land whose statements we have recorded we find a very general use of words which usually mean to us some form of outright, irrevocable exchange (Boyes: 'purchased'; Routledge: 'paid for the land'; Talbot-Smith: 'sold'; Lawford: 'bought or bartered'; McClure: 'ceded'; Tate: 'bought out'; Northcote: 'purchased'; Dundas: 'bought'; Beech: 'purchased'; Ainsworth: 'paid'; Watkins: 'purchased'; Canon Leakey: 'bought'; 1929 Committee: 'payments'; Land Commission: 'succeeded the Dorobo'; Dr. Leakey: 'bought'). Several of these investigators qualified the expressions they used to an extent which affirmed or suggested that they did not necessarily mean thereby an outright irrevocable transfer of land in the European sense (Northcote: 'the right to fell trees and to cultivate and the right to live in peace'; Beech: 'as price of peace'; Ainsworth: 'in respect of disturbance'; Watkins: 'obviously a later interpretation'; 1929 Committee: 'exact implication not defined'; Land Commission: 'by a process partly of alliance and partnership, and partly of adoption and absorption, partly of payment, and largely of force and chicanery'). There is a lack of definition in the recorded statements of Boyes, Routledge, Talbot-Smith and McClure. Lawford's account appears to imply outright purchase but is not entirely clear on the point. Tate and Dundas seem to have understood their informants to refer to outright purchase, and Canon Leakey and Dr. Leakey are both absolutely certain that the payments to the Dorobo involved an irredeemable transfer of land ownership, equivalent to a transfer of the freehold in our own system.

[p. 967] Difficulties in assessing value of evidence

There were and are obvious difficulties confronting enquirers. It is probable that in the early days the main difficulty was simply one of interpretation. Latterly the chief problem has been a political one—it has become necessary to assess the value of

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The oaths

It is not suggested that the Kikuyu deliberately sat down and set about devising an adaptation of the rites of aggregation known to them and kindred tribes with the express intention of discovering a formula to suit their book; nor is it suggested that an astute Kikuyu brain would be incapable of inventing some new system which would give them in one transaction what they wanted. But the Dorobo had to be reckoned with, and they were a people certainly no less conservative than the average tribe; any startling innovation or any pattern of behavior not readily related to established custom would be rejected. If the Kikuyu had in fact invented some new rite which gave them absolute and unconditional ownership of land, and if the Dorobo had in fact accepted it, we should certainly expect the detail of the rite to make it clear that outright purchase was an essential part of it and understood by both. But there is nothing in the wording of the oath the parties swore (as recorded and translated by Dr. Leakey in his study of the Southern Kikuyu) which clarifies this point. The Kikuyu party swore as follows: —

"1. As for me, if any man draws blood of this my Mwathi and kills him, and if I do not make him pay me a full hundred (goats and sheep understood) may I break this (1).

1. Presumably a misprint for "may I break thus," i.e. "may I be broken like this." The Kikuyu is ndirotuika ugwo.

2. As for me, if I should ever call him a Mwathi, or suggest that he is not a Kikuyu like myself, may I break this.
3. As for me, if I should fail to treat him as the son of my own mother, may I break this.
4. As for me, if I should ever seek out someone and get them to kill him in order that I may acquire his land from him without paying for it to the full, may I break this.
5. As for me, if any other family should try to enter illegally the land that I am going to buy from this Mwathi who is performing this adoption ceremony with me, and if I fail to sue him for so doing, may I break this.
6. As for me, if I should fail to give him a present of so many

5:Lambert--83 G-5 (ca. 1935-1950) 1950 FL10 Kikuyu FL10
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goats and sheep (here he makes a gesture with his hands to indicate the numbers in terms of units of ten) in order that you may all know that he is now my mother's son, may I break this.

7. As for me, if when a child of mine marries I fail to invite him to come and share in the meal of the Ngoima of the family, may I break this."

The Kikuyu having taken these seven vows the Dorobo also took seven vows as follows:

[p. 108] "1. As for me, since now I have come to this man, if now I am not his, may I break this.

2. As for me, in respect of the promises I am making to him, if I should break them, may I break this.

3. As for me, if I should betray him so he is killed by another Mwathi or by a Masai through me, may I break this.

4. As for me, though I still remain a Wanderobo, if I am not now also a Kikuyu, may I break this.

5. As for me, if any other Wanderobo should kill this my own Kikuyu and if I should fail to help you to spy out his homestead so that we can kill (the murderer), may I break this.

6. As for me, if any man should bring an action against this man in connection with the land (I am selling him), if I fail to take part or show the boundaries that I fixed, may I break this.

7. As for me, if I shall resume the Wanderobo habit of moving my homestead about and should thus abandon this man with whom I have been through the mutual adoption ceremony, may I break this."

We must examine the clauses of these two sets of vows which specifically refer to land. In Kikuyu vow No. 4, the phrase "that I may acquire his land from him without paying for it to the full" is a translation of ndimutunye githaka giake itarihite," which means literally "that I may take his land from him by force without paying" and could refer to a redeemable transaction just as easily as to an irredeemable one. In Kikuyu vow No. 5, the expression "the land that I am going to buy from this Mwathi" is a translation of "githaka giki ngugura kuri Mwathi uyu" and the use of the word -gura renders the precise meaning of the transaction unascertainable.

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Certainly in Meturne, where the Kikuyu came from, the meaning of the word in regard to land transactions was not "buy outright" but rather "hold as security against a loan." At the same time it must be remembered that when Dr. Leakey recorded the vows his informants had probably already become completely accustomed to the new meaning of -gura in relation to land transactions. None the less one would have expected so radical a change to be reflected either in the use of a new word or in some qualifying phrase which made the intention clear, and that that new word or qualifying phrase would have been retained as part of the formula used and remembered. In Dorobo vow No. 6, the phrase "in connection with the land (I am selling him)" is a translation of "ni undu wa githaka kiu" which means "on account of that land (previously mentioned)," and the phrase "if I fail to take part to show the boundaries that I fixed" is a translation of "ndaaga gucira na mundu ucio ndimwonie kuria twahakanite nake," which means "if I fail to take up the matter (legally) with the said person and show him where, together with him, I marked out the boundary." This vow does not necessarily imply any outright sale, nor indeed any sort of sale at all.

The simplest explanation of the whole transaction is that the Kikuyu were acquiring rights in land hitherto inoccupation of another tribe, and that these rights were meant to supersede those previously vested in the "sellers"; and that the ceremony of adoption was intended as a guarantee of good faith between the two, to minimize the possibility of double-dealing, and put the transfer on a business footing. That is the simplest explanation to the European mind, but the transaction was not between two Europeans but between two Africans; we should probably be wrong [p. 109] if we allowed our preconceived ideas to color our interpretation of the facts, and we should almost certainly be wrong if we neglected customary canons which we have every reason to believe were still the only principles, reinforced by centuries of use, known to the Africans concerned. In native custom it is rare indeed that one can settle in another tribe's domain merely by inveigling members of it to disavow their law and custom and their way of life, abjure their tribe and take one's own instead, and even dispossess themselves of land and livelihood, and all for nothing of more worth by way of recompense than mutton on the menu for a time. We cannot but conclude that

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174 form (1), and that the principle of outright purchase was afterwards
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1. cf. the Kiambu Handing Over Report, 1943: "... the principle of interpenetration has as yet brought slight relief to Kiambu's excess of landless people. Interpenetration, to the average native mind, involves adoption, full absorption into family, clan, and tribe, but the Kikuyu, when his numbers and the wiles his twisted mind creates, afford him, in his own opinion, safety, treats it as infiltration in a foreign land from which the foreigners in time will be expelled. When Kiambu Kikuyu congregate outside their tribal lands they are, wherever they may be, Kikuyu first and last and all the time, but not from any patriotic sense or tribal pride but simply that they see therein a chance to oust the indigenes and gain their pooled but egoistic ends by common effort and, when that is done, begin the final phase of ousting one another."

invented to obscure the things they did rather than describe the
K things they swore to do. It is perhaps significant in this respect that
[114] Mr. Jomo Kenyatta in his very clear account of acquisition and tenure in Facing Mount Kenya, talks consistently of purchase but nowhere mentions brother-adoption as a pre-condition.

The things they did were related to me by one old Kikuyu man as follows: "There was first a ceremony of adoption, not the ordinary son-adoption well known to the Kikuyu, by which a young man could be adopted as a son by an older man and so become one of his mbari and renounce his own, but a brother-adoption (-chiarana, instead of -chiara). The Kikuyu and the Mwathi then became as brothers. They adopted one another, so each became as it were both father and son to the other. As the father he would be expected to give something to the other, just as in the ordinary son-adoption he would give his son a place to cultivate and even 'buy' a wife for him. The Mwathi had nothing but land so he gave the Kikuyu a

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place to cultivate. The Kikuyu gave the Mwathi some goats. The Kikuyu could also buy land from the Mwathi, paying goats for it. But the Mwathi had been made a Kikuyu by adoption and so the sale of land would be redeemable because the sale of land between two Kikuyu was always redeemable at that time. The Mwathi, having got his goats, moved off. If he had been an adopted son he could not have done that. But because he was an adopted brother he could do it. He came back from time to time for more goats, but never came back to settle. His son did the same thing. The first transactions with the Athi had no end in sight. But in the time of the Maina generation the Kikuyu got tired of supplying goats for land they had by then occupied for some considerable time (2) and they

> 2. cf. H.E. Lambert: "The Constitution and Personnel of Statutory Institutions in the Meru Native Reserve," 1939: "(Reciprocal blood-brotherhood) produces its factual avoidances of friendship as well as its juridical abstentions from enmity, and implies not merely unwilling submission to extortion but tacit sanctuary for criminals."

said that the matter should be brought to an end by smearing tatha round the boundary and planting itoka lilies where necessary. [p. 110] The Dorobo did not like this but had to agree. But when it came to the point they would only do a piece and then refuse to go on. So they got more goats. They were very reluctant to close the boundary completely and nearly always left a gap for a very long time. So the Kikuyu had to go on paying goats. But in the end they got the descendants to come and finish it off."

A great deal of evidence before the Land Commission suggested much the same thing, that is, that in the early days of immigration south of the Chania there was no clear intention of finality of payment, but that later on what purported to be a final payment was actually made in at least some cases and accepted as such, however reluctantly, by the Dorobo concerned.